ATTORNEY FOR APPELLANT:

DONALD C. SWANSON, JR.
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JOSEPH ROBERT DELAMATER
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

RICHARD MORGAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0712-CR-561
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
The Honorable Robert J. Schmoll, Magistrate
Cause No. 02D04-0706-FB-85

March 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Following his plea of guilty to dealing in cocaine as a Class B felony, Richard Morgan appeals his advisory sentence of ten years with four years suspended. Specifically, he maintains that his sentence is inappropriate. Finding that his sentence is not inappropriate, we affirm.

Facts and Procedural History

On June 1, 2007, Morgan was charged with two counts of dealing in cocaine as a Class B felony, possession of cocaine as a Class C felony, and possession of marijuana hash oil or hashish as a Class A misdemeanor. On August 1, 2007, Morgan pled guilty to one count of dealing in cocaine as a Class B felony,[1] and the remaining charges were dismissed. Sentencing was left to the trial court's discretion. According to the factual basis presented by the State:

> [O]n or about the 9th day of May, 2007 in the County of Allen and in the State of Indiana, said Defendant, Richard Morgan, did knowingly or intentionally deliver to CI Number 662, a confidential informant with the Fort Wayne Police Department, cocaine, pure or adulterated being contrary to the form of the statute in such case as made and provided.

Sent. Tr. p. 8-9. The trial court accepted Morgan's plea agreement. Following a sentencing hearing, the trial court sentenced Morgan to ten years with four years suspended to probation. Morgan now appeals.

Discussion and Decision

Morgan contends that his ten-year sentence is inappropriate in light of the nature of the offense and his character. Although a trial court may have acted within its lawful

[1] Ind. Code § 35-48-4-1.

discretion in imposing a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). The burden is on the defendant to persuade us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As an initial matter, we note that the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Anglemyer*, 868 N.E.2d at 494. Therefore, when the trial court imposes the advisory sentence, the defendant bears a heavy burden in persuading us that his or her sentence is inappropriate. *See McKinney v. State*, 873 N.E.2d 630, 647 (Ind. Ct. App. 2007), *trans. denied*. Here, Morgan pled guilty to a Class B felony. "A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years." Ind. Code § 35-50-2-5.

Regarding the nature of the offense, the record does not reveal much because of the guilty plea. Nonetheless, we know from the presentence investigation report that Morgan was a drug dealer who admitted to dealing in cocaine. As for the character of the offender, Morgan argues that his good character is evidenced by the fact that he "is the father of a child, was a college student at the time of his arrest, did not have an inventory

of illicit drugs to deliver to the confidential informant, had prior employment, and had a history of substance abuse." Appellant's Br. p. 5. In addition, Morgan pled guilty to the offense and expressed remorse at his sentencing. As for Morgan's employment, however, the presentence investigation report indicates that his work history is inconsistent. He was out of work for over seven months when he was charged with the instant offense, and he was terminated from two jobs in 2003 and 2004. Although this is Morgan's first felony conviction, he has a criminal history consisting of two juvenile delinquency adjudications, one for criminal mischief and one for criminal trespass, and three misdemeanor convictions as an adult, including one for domestic battery. Given the nature of the offense and the character of this offender, Morgan's advisory sentence of ten years with four years suspended is not inappropriate.

Affirmed.

SHARPNACK, J., and BARNES, J., concur.